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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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KWAME GORDON,

) Case No.: 2:10-cv-00621-RLH-LRL

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Plaintiff,

) **O R D E R**

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) vs.

) (Motion to Dismiss-#4)

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FIRST OPTION MORTGAGE, DEL WEBB
HOME FINANCE, DEUTSCHE BANK
NATIONAL TRUST COMPANY, FIRST
AMERICAN LOANSTAR TRUSTEE
SERVICES, INDYMAC BANK FSB,

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) Defendants.

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Before the Court is Defendant Deutsche Bank National Trust Company's ("Deutsche Bank") **Motion to Dismiss** (#4), filed June 8, 2010. Plaintiff Kwame Gordon failed to respond.

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BACKGROUND

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This case involves Kwame Gordon's disputed mortgage loan. Gordon alleges various types of misconduct against the various Defendants in their efforts to foreclose on his property. Gordon does not dispute that he took out a mortgage and subsequently failed to make payments.

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1 Deutsche Bank has now filed a motion to dismiss. Further, on September 24, 2010,
2 the Court entered a Notice of Intent to Dismiss Pursuant to Fed. R. Civ. P. 4(m) (#10) due to
3 Gordon's failure to provide the Court with proof of service on Defendants First Option Mortgage,
4 Del Webb Home Finance, First American Loanstar Trustee Services, or Indymac Bank FSB. For
5 the reasons discussed below, the Court grants Deutsche Bank's motion and dismisses this case in
6 its entirety pursuant to Rule 4(m).

7 DISCUSSION

8 I. Motion to Dismiss

9 If one party files a motion to dismiss pursuant to Rule 12(b)(6), the party against
10 whom that motion is filed must file points and authorities in opposition to that motion within
11 fifteen (15) days after the service of the motion. Local Rule 7-2(b). The failure of a party to file
12 points and authorities in opposition to any motion constitutes consent to the Court's grant of the
13 motion. Local Rule 7-2(d). Gordon did not file an opposition to Deutsche Bank's motion as
14 required by the local rules. Therefore, the Court grants Deutsche Bank's motion. *Ghazali v.*
15 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (holding that failure to follow the district court's local rules
16 is proper ground for dismissal).

17 II. Unserved Defendants

18 Rule 4(m) of the Federal Rules of Civil Procedure provides: "If a defendant is not
19 served within 120 days after the complaint is filed, the court—on motion or on its own after notice
20 to the plaintiff—must dismiss the action without prejudice against that defendant or order that
21 service be made within a specified time." Gordon filed his complaint on April 29, 2010. Gordon
22 failed to serve the above named Defendants, except Deutsche Bank, within 120 days of filing on or
23 about August 29, 2010. The Court advised Gordon of its intent to dismiss his claims against these
24 defendants for his failure to provide proof of service. Gordon has not shown proof of service
25 despite the Court's warning. Therefore, the Court dismisses his claim against these plaintiffs.

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CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Deutsche Bank's Motion to Dismiss (#4) is GRANTED.

IT IS FURTHER ORDERED that the remaining defendants are dismissed pursuant to Rule 4(m).

The Clerk of the Court is directed to close this case.

Dated: October 25, 2010.


ROGER L. HUNT
Chief United States District Judge